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July 22, 1999

By Federal Express
Ms. Magalie Roman Salas
Commission Secretary
Federal Communications Commission
Room TW-A325
445 12th Street, S.W.
Washington D.C. 20554

RE: Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from Ameritech to SBC, CC Docket No. 98-141

Dear Ms. Salas:

Enclosed please find my certification that I have served all parties in the above-referenced proceeding with copies of Ntegrity Telecontent Services' July 19, 1999 letter submission to the FCC. I am also enclosing a copy of that submission, an original of which (along with nine copies) was timely filed with your office on July 19, 1999. Please feel free to contact me at the number listed above with any questions or concerns that you may have.

Very truly yours,

Neil M. Barofsky

Enc.

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CERTIFICATE OF SERVICE

I, Neil M. Barofsky, hereby certify that copies of the annexed document regarding CC Docket NO. 98-141 were served by first class mail, postage prepaid, on the following parties this 20th day of July 1999.

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NTEGRITY
TELECONTENT SERVICES

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July 19, 1999

BY HAND

Ms. Magalie Roman Salas
Commission Secretary
Federal Communications Commission
Room TW-A325
445 12th Street, S.W.
Washington D.C. 20554

RE: **Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from Ameritech to SBC, CC Docket No. 98-141**

Dear Ms. Salas:

Pursuant to the Federal Communication Commission's July 1, 1999 Public Notice, Ntegrity Telecontent Services ("Ntegrity") submits the following comments on the conditions proposed to the Commission by SBC and Ameritech concerning their merger (CC Docket No. 98-141).

Ntegrity maintains that SBC and Ameritech have failed to demonstrate that this merger serves the public interest, until additional conditions that protect resellers of Baby Bells' local telephone services are imposed as a precondition for the merger.

INTRODUCTION AND BACKGROUND OF NTEGRITY

When enacting the Telecommunications Act of 1996 (the "1996 Act" or the "Act"), Congress intended to expand the choice and control of the citizens of the United States in selecting a local telephone carrier, and to give them universal access and competitive pricing. To achieve this goal, Congress recognized that it had to break the stranglehold that the Regional Bell Operating Companies ("RBOCs" or "Baby Bells") had on local service and force them to permit competition. It did this by compelling the RBOCs to grant Competitive Local Exchange Carriers ("CLECs") access to their facilities, allowing the CLECs to resell the Baby Bells' services at a discount. Congress thus granted entrepreneurs within the telecommunications industry the opportunity to realize the American Dream -- to use their education, experience, professionalism, and hard work to create viable competitors to the monolithic Baby Bells.

Ntegrity was founded by Dwayne Goldsmith and Keith Machen in 1996, shortly after Congress passed the Act. Mr. Goldsmith, the CEO of Ntegrity, had rapidly ascended the corporate ladder of Ameritech, becoming at the age of 34, Ameritech's youngest corporate division president. Earning a B.S. (with High Distinction) in engineering from Wayne State University and an M.B.A. from the University of Michigan, as Ameritech foresaw, Mr. Goldsmith had the ability to merge an engineer's precision with his expertise in marketing and sales. Ntegrity hopes, on the corporate level, to duplicate Mr. Goldsmith s individual success within the communications industry.

Keith Machen, Vice-President and General Counsel, received his law degree from the University of Michigan and his undergraduate degree from Purdue University. After working in private practice, he joined Ameritech to gain hands-on business experience in the telecommunications industry.

Having spent much of their professional lives working for a Baby Bell, Messrs. Goldsmith and Machen combined their different backgrounds to form Ntegrity, to answer Congress' call and to make its goal of local competition a reality. Ntegrity was founded with the intent of taking advantage of the protections that Congress afforded CLECs in the 1996 Act.

Ntegrity had its first customer in August 1998 and its 1,000th customer in October 1998. Its' approximately 30 employees began to service many thousands of customers within a matter of a few months – not years. Its' current customers are located in New Jersey, Pennsylvania and Maryland, with certifications in Massachusetts, New York and Virginia. Ntegrity expects its customer base to approach 10,000 in a matter of months, and now is seeking certification in Michigan where it would be forced to do business with the merged SBC-Ameritech.

What Ntegrity, along with Congress and this Commission, failed to realize in 1996 was the lengths to which the Baby Bells would be willing to go to protect their monopolies. We have been the victim of an array of anti-competitive behavior at the hands Bell Atlantic, the RBOC that controls the Northeast. Every inroad we have made has been met by new costs and other barriers that Bell Atlantic has erected in our path. Some of these barriers were arguably violative of the anti-trust laws, such as requiring our customers to pre-pay for Yellow Page advertisements one year in advance, while Bell Atlantic continued to bill its own customers monthly. Bell Atlantic has forced resale CLECs to challenge other anti-competitive practices, such as the practice of denying our customers access to voice-mail – which should be made an Unbundled Network Element ("UNE") -- on a jurisdiction by jurisdiction basis. The practice of denying voice mail to CLEC customers has resulted in solidifying Bell Atlantic's monopoly over nearly one-third of its residential customers. The most insidious barriers, however, are the constant barrage of ingenious methods that Bell Atlantic employs to drive up our costs and limit our ability to compete. These include - charging us prohibitive and irrational fees when we are able to persuade a customer to switch to Ntegrity, burdensome forms with 25 different fields of entry that we must manually input into a computer system designed by Bell Atlantic before Bell Atlantic will switch that customer over to us, and inundating us with mountains of error-filled paper bills without providing us with a meaningful opportunity to be billed electronically.[1]

We write today because we see an opportunity to address these injustices, which we understand are common to CLECs throughout the country. The proposed merger between

[1] In keeping with the ideals which made Ntegrity the natural choice for the name of our company, when these problems with Bell Atlantic first arose in the Fall of 1998, Ntegrity repeatedly contacted the president of Bell Atlantic's CLEC division, to no avail.

two of the Baby Bells, SBC and Ameritech, presents the FCC with the opportunity to implement conditions to its approval of the merger that will enable resale CLECs such as ourselves to compete. The conditions we seek are not burdensome; they will do little more than force the Baby Bells to live up the spirit, as well as the letter, of the 1996 Act. While we were initially silent on the proposed merger (as a CLEC that does not yet do business with either SBC or Ameritech, we believed that our input was unnecessary), the publishing of the proposed conditions on the merger has made it apparent that we must formally object. These conditions simply do not adequately address the anti-competitive realities faced by resale CLECs that will do business with the merged entity.

The conditions that the FCC ultimately approves must specifically address the anti-competitive tactics described herein. These barriers to competition drive up CLECs' costs, and therefore the prices that CLECs offer customers. They also are the reason why existing RBOCs have until now found it uneconomical to enter other RBOC markets. The current proposals attempt to address the failure of inter-RBOC competition by imposing billions of dollars of penalties on the newly merged company if it fails to enter new markets. Although the intent behind such a condition is admirable, it does not do enough to address the barriers and costs that make entry into new markets unprofitable for the RBOCs. If that problem were solved, penalties for failure to compete would be unnecessary. RBOCs would enter each others' markets because it would be profitable to do so. Moreover, while the threat of billions of dollars in sanctions may compel SBC-Ameritech to enter new markets, it will not provide customers with any realistic savings. So long as the expensive barriers to competition are permitted to exist, CLECs will not be able to offer small customers the significant savings that competition was intended to create. A merged SBC-Ameritech when entering out-of-region markets will serve large corporations in central business districts. For these reasons, Ntegrity submits that the current proposed conditions are insufficient to protect the American people. There will not be meaningful competition in the local phone market until the monopolistic RBOCs are forced to abandon their anti-competitive activities. Accordingly, only if SBC and Ameritech are compelled to adopt the conditions urged in our and in other CLECs' submissions can the FCC begin an important new chapter in the enforcement of the 1996 Act.

If our and other CLECs' proposed conditions are adopted as a pre-condition to the merger, local telephone service will evolve into the competitive market envisioned by Congress. Long distance competition, of course, arose out of the same structure that Congress implemented in the 1996 Act. Congress clearly intended for the Act to be for local telephone service what the breakup of AT&T was for the long-distance industry. Today roughly 40% of the long distance market is held by new entrants. In sharp contrast, less than 2% of the local market is held by non-ILECs nearly four years after the Act. Upstart entrepreneurs such as MCI were given the opportunity to resell AT&T's long distance service at a discount. Once MCI built up customers and capital, it was able to build its own network and became a facility-based competitor. At Ntegrity, we viewed the 1996 Act as giving us the opportunity to be the next MCI, and we believed that through our expertise and skill we would be able to offer customers the choice of a better alternative, first as resellers and then as a facilities-based competitor of the Baby Bells. We present this submission in the hope that the FCC will adopt our proposals as pre-conditions to the merger and give CLECs like Ntegrity the opportunity to compete in the manner envisioned by Congress.

We at Ntegrity believe that the viability of our dream rests on the conditions that are ultimately imposed on SBC and Ameritech. The SBC-Ameritech merger, of course, is the latest in a series of mergers that have put resale CLECs at peril. This new entity would be the second largest telecom company in the country behind only AT&T, and would control one-third of all telephone lines in the country from California to Connecticut and Michigan to Texas. On the heels of the FCC's consideration of the SBC-Ameritech proposal is the impending merger of Bell Atlantic and GTE. As the Bell Atlantic-Nynex merger has obviously influenced the Commission's approach here, the SBC-Ameritech conditions are likely to be the blueprint for Bell Atlantic and GTE. If the FCC does not adopt and incorporate our proposed conditions as pre-conditions for this and all future mergers, the economically inefficient barriers to competition will continue, and the American consumer will continue to be deprived of any meaningful choice or control of their local telephone service.

BABY BELLS CREATE BARRIERS TO COMPETITION FOR RESELLERS

As Mr. Krattenmaker of the FCC Staff so succinctly put it on May 6, 1999, "market opening conditions in a region should facilitate rapid competitive entry, eliminate any unreasonable start-up costs that the applicants could impose on new competitors and minimize the applicants' ability to increase competitors' direct and indirect long-term operating costs." The current proposed conditions do not achieve this goal. If CLECs like Ntegrity are to survive and continue to provide consumers with choice, control, and low-cost alternatives to the Baby Bells, additional conditions are necessary to combat the ingenuity exercised by the Baby Bells to create anti-competitive barriers for resellers to enter this market.

As the prior merger of Bell Atlantic and Nynex made apparent, pro-competitive "promises" made by RBOCs are not to be believed. The Commission thus has the duty to carefully consider the conditions it should impose on this merger. Its decisions will have a far-reaching impact as the seemingly uncontrollable consolidation of the telecommunications industry steam rolls ahead. Now is the time for the Commission to decide whether the future of the local exchange markets will provide consumers with a choice other than the megalith Mother Bells. In other words, as Ameritech's General Counsel put it in his testimony on May 6, 1999: whether "you are only ultimately going to see two types of companies: those that go global and those that go bankrupt."

The current barriers to competition created by the RBOCs have seriously limited the choices of consumers. For example, an entrepreneurial CLEC in New York must tell each and every potential small business customer that it will cost $35.90 to transfer service from the RBOC to the CLEC, and must tell approximately 30% of potential residential customers in other States in the Bell Atlantic region that they will not be able to retain their voice mail. These are currently approved barriers to competition. Unfortunately, in addition to these approved barriers, the Baby Bells have also exercised their ingenuity to create multiple and other varied barriers to entry into the marketplace by resellers like Ntegrity.

The cumulative effect of this anti-competitive behavior has already cost Ntegrity hundreds of thousands of dollars in direct out-of-pocket expenses, millions of dollars in lost revenues, and tens of millions of dollars in lost market value (this market value would enable a small company to become a facilities-based competitor). If the FCC does not step in and require pre-conditions to the mergers that will have a real effect on competition -- as opposed to the specter of billion dollar penalties designed to bludgeon SBC-Ameritech into entering other markets -- Ntegrity's losses will mount, and the choice it and other CLECs offer to consumers will evaporate. Some of the additional conditions that should be imposed to insure that resellers like Ntegrity can continue to offer consumers a choice follow.

ANTI-COMPETITIVE CONDUCT REQUIRING ADDITIONAL PRE-CONDITIONS

1. RBOC Billing -- 50% Billing Rate Errors Require Audits While Refusals to Supply Electronic Billing Precludes Audits

A prime example of the costly and ingenious anti-competitive behavior to which CLECs are subject is the error-filled method Bell Atlantic uses to bill Ntegrity. RBOCs must be required to use accurate electronic billing, or bear the costs themselves of their own errors, instead of imposing that cost on CLECs. The current procedures are designed to discourage competition by making it virtually impossible for CLECs to audit the bills they receive from the Baby Bells.

Specifically, Ntegrity receives an average of 8-10 pages of paper per customer per month resulting in 70,000-100,000 pages of bills each month, depending on the number of Ntegrity customers. The error rate on this unwieldy mass of paper is an outrageous 50% -- leading to 15-25% disputed dollars and approximately 5,000-7,000 disputed items each month. Currently, Ntegrity's staff spends 100 hours a week to resolve these disputed items resulting in the loss of 5,000 hours a year, at a cost of approximately $100,000. Even this effort does not solve the problem. Under the current RBOC billing procedures, to audit Bell Atlantic's bills Ntegrity would have to double or triple its staff.

These evils can be remedied if the FCC requires SBC and Ameritech to provide accurate and usable electronic billing to its CLECs. This would create no additional cost to the RBOCs (they already bill other customers electronically), and would help forestall one of the most devastating weapons against competition in the RBOCs arsenal.[2]

2. **Provisioning -- Unnecessary, Expensive, Error-prone <u>Prohibitions on Access to New Customers</u>**

[2] In typical RBOC fashion, Bell Atlantic has recently responded to Ntegrity's billing complaints by offering electronic monthly billing, but refusing to issue both paper bills and electronic billing, even for a short transition period. As Bell Atlantic is fully aware, a CLEC cannot convert from paper to electronic billing in a single cycle. Because Ntegrity's only current records are the paper bills that Bell Atlantic previously sent, Ntegrity would have no way to compare the electronic billing with a concurrent paper record to insure that the electronic billing contained the same and accurate information. As a result, Bell Atlantic's offer is really no offer at all.

A second area of competitive abuse currently available to RBOCs is the creative record requirements that they can impose on resellers when the CLEC wins a customer from an RBOC. These customer access requirements imposed before a reseller can transfer a customer from an RBOC unnecessarily drive up resellers' costs and can only be explained as an effort on behalf of RBOCs to stymie competition. RBOCs must be required to remedy this inequitable and blatantly anti-competitive behavior.

For example, in order to make a simple change of a customer from Bell Atlantic to Ntegrity, Ntegrity must provide Bell Atlantic with 25 different pieces of information on a form (supplied by Bell Atlantic) that has 115 separate entry lines. And this is simply for a billing change, not one that contemplates a change in the type of service.

Each and every RBOC customer can order a change in service simply by calling the RBOC, giving the phone number about which the service is requested, identifying himself or herself, and specifying the change in service. Not so for a CLEC. A CLEC who has beaten the prohibitive odds against it and has actually "won" a customer from an RBOC must provide the RBOC with more than 25 different pieces of information that the CLEC must manually input into a computer system designed by Bell Atlantic.

This process is completely unnecessary, as demonstrated in Bell Atlantic's case by its treatment of its own retail customers. Bell Atlantic needs only the customer's existing telephone number for it to pull up all of the information contained on the "Convert As Is" form. To confirm that it has the right customer, Bell Atlantic also asks for the customer's name. No other information is necessary because Bell Atlantic already has the information. Similarly, in the event of a transfer of billing to the CLEC, the RBOC only needs the same information – a customer's phone number. With that the RBOC can retrieve all information about the customer in a matter of seconds. Instead, Bell Atlantic requires Ntegrity to get the data from another Bell Atlantic computer system, print it out and then retype it. This absurd procedure not only serves as an annoyance to potential Ntegrity customers, it creates numerous opportunities for human error as Ntegrity employees complete the forms. Accordingly, even if the aspiring CLEC can convince potential customers that switching local carriers is worth the $35.90 cancellation charge (discussed below) and 15 minutes of their time, it still faces the danger that its "win" will be rejected because human error caused the CLEC employee to enter the wrong street address or zip code of the potential client on the "Convert As Is" form.

No legitimate reason whatsoever lies behind Bell Atlantic's demand for 25 different pieces of information for one of its current customers. The only reasons for this requirement are anti-competitive ones. It is intrusive, labor intensive, time-consuming, expensive and error-prone,[3] and may be remedied by prohibiting such "provisioning" burdens as a pre-condition to this and all future mergers.

3. Record Order Charges -- Unjustified Cancellation Penalties

[3] Currently, Bell Atlantic touts to CLECs an unproven and expensive software system (a cost of at least $500,000) to bypass the provisioning requirements that is beyond the capabilities of start-up CLECs like Ntegrity.

A third area in which the RBOCs unfairly impose anti-competitive burdens on nascent CLECs are the cancellation penalties they charge when a CLEC is able to win an existing RBOC customer. Bell Atlantic calls this fee a Record Order Charge. Ntegrity calls it a cancellation charge. The amount of these charges is utterly without justification.

For example, while in New York Bell Atlantic does not charge its retail customers to change the address to which a bill is to be sent, to transfer that same customer's bill to a CLEC, Bell Atlantic charges as much as $35.90. If Ntegrity passes this charge along to a small business, the charge eliminates any savings that it could offer the potential customer in the short run, giving a small business little incentive to change service. If a reseller like Ntegrity absorbs this charge, it would double its sales cost. These cancellation charges therefore effectively eliminate the choice intended by Congress.

RBOCs' justification for these prohibitive charges cannot withstand scrutiny. In obtaining PUC authorization for the record order fees that it charges its retail customers in New York, Bell Atlantic's representative testified that the amount of this charge is primarily justified by the costs it incurs in processing a new customer, obtaining information from him or her, and setting up their service. (See Exhibit A.) This testimony is not relevant to the expenses an RBOC incurs when transferring one of its customers to a CLEC. At this point the RBOC already has the customer's information, and its service is already set up. The cost, therefore, is more akin to the charge when an existing customer changes its billing address, a cost which, as noted above, Bell Atlantic does not impose.

Significantly, Bell Atlantic has not been able to justify a Record Order Charge of $35.90 in every state. These charges vary widely from state to state. In New Jersey, for example, the charge for a new small business customer is only $16.15. The difference between these charges demonstrate that they are arbitrary and that they should be inapplicable to resellers.

While Ntegrity does not dispute the amount of the record order charge for Bell Atlantic end-users, and does not even dispute that Bell Atlantic may be entitled to some minimal charge for the negligible work required to transfer a Bell Atlantic customer to Ntegrity, Bell Atlantic has not and cannot justify the amount of its current record order charges for what is no more than a simple change in the billing of one of its customers to Ntegrity. After all, Ntegrity charges neither Bell nor its customers a single cent when a customer is transferred back to Bell Atlantic. If Ntegrity can do that transfer for nothing, then surely Bell Atlantic does not need to charge $35.90.

4. <u>Arbitrary Denial of CLECs' Customers' Access to Voice Mail</u>

A fourth anti-competitive tactic used by the RBOCs is to withhold voice mail from CLEC customers. For example, approximately 30% of Bell Atlantic's residential customers have voice mail. New York, Delaware and Vermont have required Bell Atlantic to make voice mail available to CLEC customers. Potential customers with voice mail outside these states have no incentive to transfer their service to CLECs, and are thus deprived of the choice intended by Congress. The FCC's failure to prohibit this practice thus far has resulted in creating a significant segment of the market that is immune from competition.

Instead of forcing CLECs to litigate this issue state by state, the FCC should find, as the Vermont Public Service Board found last month, that "[d]irecting that Bell Atlantic make [voice mail] service available for resale increases the ability of the retail customers of CLECs to receive the service, and thereby promotes the convenience and accommodation of the public." (See Exhibit B.) In sum, Avoice messaging is a service valued by customers, and [there is] no reason to suppose that CLEC customers value it any less than the customers of incumbent carriers. Id. The Vermont Board thus concluded that voice messaging is an interactive two-way electromagnetic communications, and therefore a telecommunications service under Vermont law.

In order to provide the choice in carriers intended by the Telecommunications Act, RBOCs must be required to permit resellers to provide voice mail to CLEC customers, and CLECs should not be required to litigate this issue jurisdiction by jurisdiction. There will be no demonstrable cost to RBOCs to provide this service; it will only loosen the monopoly they have over nearly one-third of their residential market. This competition is the very purpose of the Act -- and indeed the only legitimate public purpose that can be served by permitting the merger to go forward.

ANTI-COMPETITIVE INGENUITY DEMONSTRATES THE IMPORTANCE OF ADDITIONAL PRE-CONDITIONS TO IMPLEMENT THE ACT'S INTENT

For entrepreneurial CLECs, anti-competitive barriers to entry cannot realistically be solved one-by-one at the PUC level or by litigation in federal court. Those are the forums in which the RBOCs with their legions of lawyers and overflowing coffers thrive. RBOCs gleefully use their deep pockets to impinge on the rights of CLECs, secure in the knowledge that few companies can afford the time and expense to vindicate their rights in jurisdiction after jurisdiction, litigating serious as well as frivolous claims. Examples of such frivolous claims have already been submitted to the Commission by other CLECs.

We note for the record other ingenious illegal barriers to entry that Ntegrity and its customers have suffered at the hands of Bell Atlantic. For example, in a procedure that was repeated by RBOCs throughout the country, Bell Atlantic refused to give Ntegrity a list of the Uniform Service Order Code ("USOC") prices that it charges CLECs, instead referring Ntegrity to the tariffs of each State. Ntegrity was thus required to plow through multiple tariff volumes at great expense to create a billing database just to determine what to charge its customers. This process took thousands of man hours of Ntegrity's employees' time. RBOCs should be required to supply CLECs with USOC price lists. Similarly, Bell Atlantic has sent collection notices and customers have received collection calls from Bell Atlantic concerning billing disputes that exist on the carrier-to-carrier level. These calls have caused significant damage to Ntegrity's customer relations and reputation as a competitor in the marketplace. These examples of varied and multiple anti-competitive tactics demonstrate the importance to consumers of the pre-conditions that the FCC must require SBC and Ameritech to accept before permitting this merger and any that follow. These conditions will, in effect, set national standards for RBOCs and should implement the intent of Congress to provide consumers with the choice and control Congress intended.

CONCLUSION

For the foregoing reasons, Ntegrity believes that the current proposed conditions are insufficient to justify the merger between SBC and Ameritech. The dangers of creating another behemoth Baby Bell,[4] of course, are well documented by the FCC staff and in the numerous submissions already before the Commission. While the proposed conditions address some of the concerns raised in those documents, they do not do enough to open the RBOCs to competition in the local exchange markets because they do not sufficiently address the reasons RBOCs are not currently competing with each other. The absence of competition may not be, as some have suggested, a "gentlemen's agreement" among the RBOCs not to compete with one another, but the result of the height, length and breadth of the anti-competitive wall that the RBOCs have independently erected around their monopolies that inhibit the entry of resellers. Indeed, by forcing the merged entity into new markets without removing the expensive barriers to entry, the new RBOC will likely seek to recoup the expenses it incurs in entering new markets by jealously guarding its home "turf" by continuing and increasing the anti-competitive practices described above. As costs mount, the new mega-RBOC will have an incentive to continue to seek new revenue-generating, competition-strangling tactics that will continue to hurt those most vulnerable, the resellers. The only way to prevent these tactics, and the inevitable disappearance of resellers, is to require more stringent conditions on the merged entities that actually address the reasons why there is so little competition in the local exchange market. For these and all of the foregoing reasons, the Commission should withhold its approval of the merger between SBC and Ameritech until additional conditions are imposed.

We would appreciate the opportunity to meet with the Staff to discuss the additional conditions we have suggested and the problems that Ntegrity has encountered.

Sincerely,

NTEGRITY TELECONTENT SERVICES

By: Shah Man

[4]Although the new entity will have certainly outgrown the moniker "Baby."

service. The costs include disconnecting cross-connections in the central office and updating line assignment and intercept records. Also included are the costs associated with the negotiation and processing of the service order. Unit costs for termination are presented in Part D, Section 3G, Page 4, of my Exhibit.

(3) The Change category includes the costs incurred when an existing customer initiates a change to their central office line, such as a change of telephone number or class of service. The costs include cross-connection work, LAC assignment, Line and Number administration, Intercept, and testing work. A summary of these unit costs is shown in Part D, Section 3G, Page 4, of my Exhibit.

Q. Please describe the activities of the RSC and BHO personnel.

A. The Residence and Business representatives, who are part of the Customer Services department, perform direct negotiations with the customer to identify the work required to provide the customer with the requested servic~. Once the customer's requirements are determined, the representative take the steps necessary to create and issue a service order. The time required to perform these functions will vary considerably depending upon the nature of the order. For example, a request for new service will take longer to negotiate and process than a request for a change in a listing record. The completed service order is forwarded to those organizations which must perform the work required to meet the customer's request.

Q. Please describe the Comptroller's department activities.

A. The Comptroller's department, which is part of the Customer Accounting organization, is responsible for the processing of a customer's service order record into a billing record.

Q. Please describe the activities involving the Number Services organization.

A. The Number Services organization is responsible for maintaining the central office switching equipment records. These records must be updated to reflect orders to connect, disconnect, or change a customer's central office line. In addition, this department maintains records related to the recorded intercept announcements that callers hear when they reach a changed or disconnected line.

Q. Please describe the activities involving the Network Services department.

A. Activities of the Network Services organization include (1) Loop Assignment Center (LAC), (2) Service Order Completion

Voice Messaging

The Hearing Officers did not recommend that Bell Atlantic be required to resell voice messaging. Their conclusion was based upon the ground that, under federal law, voice messaging is not a telecommunications service and also upon the ground that the record was insufficient to justify use of state authority. We disagree on both points.

As the Hearing Officers noted, the FCC has ruled that voice messaging need not be resold, and its reasoning was that telecommunications services and information services, including voice messaging, are "separate, non-overlapping categories." They noted that voice messaging appears to meet the statutory definition of a "telecommunications service," but for the separate doctrine that information services cannot be telecommunications services.

This distinction between information services and telecommunications services has been undercut, however, by two recent FCC decisions involving the Internet. In one case, the FCC decided that dial-up Internet calls ("ISP-bound traffic") are single telecommunications transactions from "end to end," including the portion of the call that travels in Internet protocol over a packet switched network.[220] The FCC also decided that a substantial portion of that Internet traffic "involves accessing interstate or foreign websites," and is therefore interstate in character.[221] This jurisdictional ruling was reached without any discussion of whether "accessing websites" is an information service or a telecommunications service. We conclude that the FCC's assertion of jurisdiction over ISP-bound traffic is inconsistent with and implicitly reverses its prior rulings that an information service cannot be a telecommunications service.

In a different decision, the FCC recently permitted the filing of ADSL tariffs as interstate services.[222] ADSL is a digital "always-on" service that provides customers with a high speed entry point into the telecommunications network. In a sense, ADSL functions as a high capacity local loop. The FCC again used the "one-call" theory. It noted that under the particular tariff under review, all communications over the ADSL circuit would terminate, not at the ISP's local server, but at the ultimate destination or destinations, very often at a distant Internet website accessed by the end user.[223] Once again, by concluding that a communication with an Internet website is interstate telecommunications, it has implicitly reversed the rule that Internet transactions are information services and therefore not a telecommunications service.

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[220] *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 99-68, Declaratory Ruling and Notice of Proposed Rulemaking, Feb. 26, 1999, FCC 99-38 ¶ 11.

[221] *Id.* The FCC did not in that order decide whether interstate Internet traffic is separable from intrastate Internet traffic. *Id.* at ¶ 19.

[222] *In re GTE Telephone Operating Company Tariff*, CC Docket No. 98-79, Memorandum Opinion and Order, 10/30/98, FCC 98-292 at ¶ 16.

[223] *Id.* at ¶ 19.

In summary, we agree with the Hearing Officers that voice messaging meets the definition of telecommunications service. Based upon our analysis of the above FCC decisions, we conclude that the fact that voice messaging is also an information service is not material to its status as a telecommunications service. Accordingly, we direct Bell Atlantic to file tariffs offering voice messaging for resale. We base this direction upon our interpretation of the federal Telecommunications Act of 1996.

We also conclude that, as a matter of state law, Bell Atlantic should offer voice messaging for resale. This conclusion is separate and independent of our interpretation of federal law.

30 V.S.A. § 203(5) states that the Board has jurisdiction over a "person or company offering telecommunications service to the public on a common carrier basis." "Telecommunications service" is defined as "the transmission of any interactive two-way electromagnetic communications, including voice, image, data and information."[214]

Voice messaging is an interactive two-way electromagnetic communications. Therefore, we conclude that voice messaging is a telecommunications service under Vermont law. The Board has authority to issue orders to any carrier providing voice messaging concerning the manner of operating and conducting its business, "so as to be reasonable and expedient, and to promote the safety, convenience and accommodation of the public."[215] It also has authority to regulate the quantity and quality of any product[216] and to restrain a telecommunications company from any unjust discriminations.[217]

The record also shows that demand is growing for this service,[218] despite the fact that similar services can be derived from customer-owned equipment. The Hearing Officer noted that the record was sparse as to the factual basis for such an assertion of state law. However, we do not believe that a detailed factual record is necessary to resolve this question, which is mainly a matter of law and policy. The record does show that voice messaging is a service valued by customers, and we have no reason to suppose that CLEC customers value it any less than the customers of incumbent carriers. Directing that Bell Atlantic make the service available for

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[214] The statute also provides that telecommunications services may be transmitted through the use of any media such as wires, cables, television cables, microwaves, radio waves, light waves or any combination of those or similar media. There are some exceptions, not material here, including "value added nonvoice services in which computer processing applications are used to act on the form, content, code and protocol of the information to be transmitted unless those services are provided under tariff approved by the public service board."

[215] 30 V.S.A. § 209(3).

[216] 30 V.S.A. § 209(1).

[217] 30 V.S.A. § 209(a)(6).

[218] *See*, findings accompanying Hearing Officers' discussion of voice messaging.

resale increases the ability of the retail customers of CLECs to receive the service, and thereby promotes the convenience and accommodation of the public.

In summary, based upon our reading of the Telecommunications Act of 1996, as well as our authority under Title 30 of Vermont law, we direct that Bell Atlantic file tariffs allowing for resale of voice messaging. We note that this decision is consistent with the decisions of several other states cited by the Hearing Officers.

Order

IT IS HEREBY ORDERED, ADJUDGED AND DECREED by the Public Service Board of the State of Vermont that:

1. Except as noted above, the findings and conclusions of the Hearing Officers are adopted.

2. Within 30 days, Bell Atlantic shall make the following changes to its Statement of Generally Available Terms to:

   a. Allow CLECs to purchase unseparated UNEs in a manner consistent with the FCC's reinstated rules and the preceding discussion;
   b. Delete the provisions authorizing a 10 percent markup on pole attachment work;
   c. Make reference to the appropriate pole attachment tariff;
   d. Permit resale of toll service at an appropriate discount;
   e. Permit resale of voice messaging service at an appropriate discount.

3. This docket shall remain open for possible review of Bell Atlantic's SGAT filings. If the SGAT is amended as required above and no objection is made within 30 days, this docket shall be closed.

DATED at Montpelier, Vermont, this 29th day of June, 1999.

s/ Michael H. Dworkin	)	PUBLIC SERVICE
	)	
s/ Suzanne D. Rude	)	BOARD
	)	
s/ David C. Coen	)	OF VERMONT

A TRUE COPY:
OFFICE OF THE CLERK

Filed: June 29, 1999

Attest: Susan M. Hudson
Clerk of the Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board of any technical errors, in order that any necessary corrections may be made.

Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.